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IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

Writ Petition No. 2170 /2004

PETITIONER

Union Public Service Commission
Dholpur House, Shahjahan Road,
New Delhi,
through its Secretary.

-Versus-

RESPONDENTS

1. Ramesh Chandra Sharma
Reportedly working as
Government of

2. Central Administrative Tribunal,
Jabalpur Bench,
Circuit Camp Bilaspur.

3. Union of India
through the Secretary
to the Govt. of India,
M/o Home Affairs,
North Block, New Delhi.

4. State of Madhya Pradesh
through the Chief Secretary,
Mantralaya,
Bhopal.

5. State of Chhattisgarh,
through its Chief Secretary,
D K S Bhawan,
Raipur.

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM : **Hon'ble Shri A.K. Patnaik, C.J.**
& **Hon'ble Shri D.R. Deshmukh, J**

WRIT PETITION NO. 2170 OF 2004

Union Public Service Commission

Versus

Ramesh Chandra Sharma & Others

Present: Mr. Surendra Pratap Singh, learned counsel for the petitioner.

Dr. N.K. Shukla, Sr. Advocate with Mr. Shailendra Shukla, learned counsel for respondent No.1.

Mr. V.V.S. Murthy, learned Dy. Advocate General with Mr. Sanjay S. Agrawal, learned Government Advocate for the State of Chhattisgarh / respondent No.5.

ORDER

(Passed on 1st September, 2005)

The following oral order of the Court was passed by A.K. Patnaik, C.J : -

The petitioner- Union Public Service Commission has filed this writ petition under Article 226/227 of the Constitution of India challenging the judgment dated 07.04.2004 passed by the Central Administrative Tribunal, Jabalpur Bench in O.A. No.99 of 1999.

2. The facts briefly are that a Selection Committee met on 12.02.1991 to prepare the select list of the year 1990-91 for promotion to the IPS cadre of Madhya Pradesh. Respondent No.1 who was a State Police

Service Officer of the State of Madhya Pradesh was included at Sl. No.29 in the eligibility list for consideration by the Selection Committee. The Selection Committee considered the 35 eligible officers including respondent No.1, but recommended only 11 officers for promotion to the Indian Police Service. The name of respondent No.1 did not find place amongst the said 11 persons recommended for promotion to the Indian Police Service. Respondent No.1 then filed O.A. No. 32 of 1994 in the State Administrative Tribunal, Indore Bench against some adverse remarks dated 31.03.1980 in his ACR. By judgment dated 31.01.1997 passed in said O.A. No.32 of 1994, the State Administrative Tribunal directed that the said adverse remarks dated 31.03.1980 be expunged from the ACR of respondent No.1. An appeal was filed by the State Government against the said judgment in the High Court, but the Indore Bench of the High Court of Madhya Pradesh dismissed the said appeal on 30.07.1997. Thereafter, the adverse remarks dated 31.03.1980 were expunged from the ACR of respondent No.1 pursuant to the judgment dated 31.01.1997 of the State Administrative Tribunal. Respondent No.1, then filed another O.A. No.199 of 1995 in the Central Administrative Tribunal, Jabalpur Bench praying inter alia that a Review Selection Committee be convened to review the recommendation of the Selection Committee in its meeting held on 12.02.1991 and to consider him for inclusion in the select list of 1990-91 consequent upon expunction of the adverse remarks in his ACR. The Central Administrative Tribunal, Jabalpur Bench passed an order on 12.12.1997 for holding a review DPC for inclusion of respondent No.1 in the select list for promotion in the year 1991 in view of the fact that the adverse remarks had been expunged. By the said order dated 12.12.1997, the Central Administrative Tribunal,

Jabalpur Bench further directed that if the respondent was found fit in the said review selection, then his name be included in the year 1991 select list. Pursuant to the said order dated 12.12.1997 of the Central Administrative Tribunal, Jabalpur Bench, the Review Committee examined the service records of respondent No.1 upto the year 1989-90, but took the view that on an overall assessment of his service records he could be assessed as very good. In the proceedings of the Review Selection Committee held on 11.12.1998, the Review Selection Committee finally recommended that respondent No.1 could not be included in the selection list due to statutory limit on the size of the select list as there was no change in the select list of the year 1990-91 prepared by the Selection Committee on 12.02.1991 in which also respondent No.1 was assessed as very good.

3. Aggrieved, respondent No.1 filed O.A. No. 99 of 1999 before the Central Administrative Tribunal, Jabalpur Bench (hereinafter referred to as "the Tribunal") praying for quashing the proceedings of the said Review Committee held on 11.12.1998 in so far as it declined to make any change in the select list of the year 1990-91 and for directing the authorities to promote him to the IPS Cadre either from the year 1987 or from the year 1991. By the impugned Judgment dated 07.04.2004, the Tribunal, held inter alia that the assessment made by the Review Selection Committee was not fair and that by any stretch of imagination and by any standard, the confidential reports of respondent cannot be graded as very good as for the entire relevant period he has been consistently rated as outstanding at all levels and in addition he has also been given many appreciation letters/ commendatory letters for doing outstanding work by the Government of Madhya Pradesh and the Director General of Police

during this period. The Tribunal further held that the grading given by the Review Selection Committee has been vitiated by arbitrariness by not assessing the respondent at par with Shri D.S. Sengar who had been assessed as outstanding by the Selection Committee in its meeting on 12.02.1991. Paragraphs 7 and 8 of the Judgment dated 07.04.2004 of the Tribunal in the said O.A. No.99 of 1999 which contain reliefs granted in the said O.A. No.99 of 1999 are quoted herein below :

> "7. In the result, the Original Application is allowed. The proceedings of the review Selection Committee dated 11-12-1998 are hereby quashed and set aside. The respondents are directed to hold a meeting of the review Selection Committee to consider the case of the applicant in the light of the observations made above for including his name in the list of IPS Cadre of Madhya Pradesh for the year 1991, by ignoring marks of ' very good' given by the DGP in the year 1989-90, within a period of four months from the date of receipt of a copy of this order. If the review Selection Committee finds the applicant fit for inclusion in the select list of IPS for the year 1991, he shall be granted all consequential benefits including seniority.
>
> 8. In the facts and circumstances of the case and particularly looking to the fact that the applicant has been compelled to come to the Tribunal time and again, we impose a cost of Rs.10,000/- (Rs. Ten thousand only) on the respondent which shall be paid to the applicant within a period of one month from the date of receipt of a copy of this order. "

4. Mr. S.P. Singh, learned counsel appearing for the petitioner submitted that respondent No.1 had not challenged the recommendations of the Selection Committee made in its meeting held on 12.02.1991 and hence the Tribunal could not have issued directions in the impugned

judgment to again hold a review Selection Committee meeting to consider the case of respondent No.1 for including his name in the select list of IPS Cadre for the year 1991. He submitted that the Tribunal also could not have directed the review Selection Committee ignore the remark of "Very Good" given by the DGP, in his ACR for the year 1989-90 and further could not have quashed the said remark when respondent No.1 had not claimed any such relief before the Tribunal for quashing the remark of "Very Good" given by DGP in his ACR for the year 1989-90. He further submitted that it is now well settled by the Supreme Court in a series of decisions that the jurisdiction of the Tribunal or Court to interfere with the recommendations of the Selection Committee is very limited and that the Tribunal or Court cannot sit as an appellate authority over the decision of the Selection Committee and substitute its own view for that of Selection Committee in assessing the merit of the candidates for selection. In support of this submission, Mr. Singh cited the decisions of Supreme Court in the case of **Dalpat Abasaheb Solunke vs. B.S. Mahajan (AIR 1990 SC 434)** and **Smt. Nutan Arvind vs. Union of India & Another (AIR 1996 SC 3352)**. He also relied on the decision of Supreme Court in the case of **Amrik Singh vs. Union of India & Others (JT 2001(2) SC 568)** that judicial review in matters of assessment of merit for the purpose of promotion is only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision as such. He finally submitted that in the facts and circumstances of the case, the Tribunal was not right to impose a cost of Rs.10,000/- on the petitioner on the ground that respondent No.1 had been compelled to come to the Tribunal time and again.

5. Dr. N.K. Shukla learned counsel appearing for respondent No.1, on the other hand, submitted that the impugned order of the Tribunal was justified in the facts and circumstances of the case and the Tribunal had not in any way exceeded its jurisdiction and had only directed a fresh meeting of the review Selection Committee to consider the case of respondent No.1 in the light of the observations made in the order of the Tribunal for including the name of respondent No.1 in the select list of candidates for promotion to the IPS Cadre of Madhya Pradesh for the year 1991 and the Tribunal has given good reasons for giving the said directions.

6. Mr. S.P. Singh, learned counsel for the petitioner is right in his submission that the Tribunal or the Court in exercise of its powers of judicial review cannot sit as an appellate authority over the assessment made by the Selection Committee with regard to the merits of the candidates for promotion to the IPS, but if the Selection Committee has ignored the procedure which has been laid down for fair assessment of merits of the candidates, the Tribunal or the Court can interfere with the recommendations of the Selection Committee and such interference by the Tribunal or the Court is only on the ground that there has been an error in the decision making process. Regulations 5(4) and 5 (5) Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as "the Regulations" are quoted herein below:

> "5(4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be, on an overall relative assessment of their Service records.
>
> 5(5) The list shall be prepared by including the required number of names first from amongst the

officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal, are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Explanation I: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court, as the case may be.

Explanation II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the office and investigation thereof is essential."

It will be clear from regulation 5(4) quoted above that the Selection Committee has to classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be on an over all relative assessment of their service records. For Categorisation of the officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit', in terms of Regulation 5(4) of

the Regulations, some guidelines / procedures have been laid down by the Government of India. The relevant portion of the said guidelines / procedures are quoted herein below:

> "**Guidelines/ procedures for categorization of State Civil / Police / Forest Service officers in terms of Regulation 5(4) of the IAS/IPS/IFS**.
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> In accordance with Regulation 5(4) of the Promotion Regulations, the Selection Committee has to classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be on an overall assessment of their service records. In this regard, for making an overall relative assessment, the procedure indicated below was followed:-
>
> 1. The Selection Committee would go through the service records of each of the eligible officers, with special reference to the performance of the officer during the last five years (preceding the years in which the Selection Committee meets), deliberating on the quality of the officer as indicated in the various columns recorded by the Reporting/ Reviewing officer / Accepting Authority in the ACRs for different years and then finally arrive at the classification to be assigned to each officer. The Selection Committee would also take into account orders regarding appreciation for the meritorious work done by the concerned officers during the period for which they are assessed. Similarly it would also keep in view orders awarding penalties or any adverse remarks communicated to the officer, which, even after due consideration of his representation, have not been completely expunged.

2. In some cases, the ACRs of an officer cannot be written for a year or more on account of his being on leave, training or because no officer supervised his work for more than three months. As the overall assessment of the officer cannot be withhold because of that period, the Selection Committee would make a categorization on the basis of available ACRs.

3. An officer shall be graded as:

a) "Outstanding", if in the opinion of the Selection Committee, the service records of the officer reflect that he is of outstanding merit possessing exceptional attributes and abilities and these characteristics are reflected in at least four of the ACRs for the last five years including the ACR for the last year (i.e. upto the preceding year of the meeting of the Selection Committee).

b) "Very Good", if in the opinion of the Selection Committee, his ACRs reflect that the officer has done highly meritorious work and possess positive attributes and these characteristics are reflected in at least three of the last five ACRs (i.e. upto the preceding year of the meeting of the Selection Committee).

c) "Good" if in the opinion of the Selection Committee, the service records reflect that the officer's performance is generally satisfactory and he is considered fit for promotion and those characteristics are reflected in at least

three of the last five ACRs (i.e. upto the preceding year of the meeting of the Selection Committee)."

It will be clear from para 1 of the aforesaid guidelines / procedures for categorization in terms of Regulation 5(4) of the IPS Cadre that the Selection Committee has to go through the service records of each of the eligible officers with special reference to the performance of the officer during the last five years (preceding the year in which Selection Committee meets), deliberating on the quality of the officer as indicated in the various columns recorded by the reporting / reviewing / accepting authority in the ACRs for different years and then finally arrive at the classification to be assigned to each officer. It will be also clear from Para 3 (a) of the aforesaid Guidelines/ procedures for categorization of State Police Service Officer in terms of Regulation 5 (4) of the IPS Cadre that an officer shall be graded as 'Outstanding', if in the opinion of the Selection Committee, the service records of the officer reflect that he is of outstanding merit possessing exceptional attributes and abilities and these characteristics are reflected in at least four of the ACRs for the last five years including the ACR for the last year (i.e. upto the preceding year of the meeting of the Selection Committee).

7. The meeting of the Selection Committee for preparation of the select list of the year 1991 took place on 12.02.1991. Hence, ACRs of the officers for the period of five years i.e. 1985-86, 1986-87, 1987-88, 1988-89 and 1989-90 had to be considered. In the ACRs of respondent No.1 for the years 1985-86, 1986-87, 1987-88 and 1988-89, he has been graded as 'Outstanding' by the Reporting Officer, Reviewing Officer and the Accepting Authority and this is what has been stated by the Tribunal in

the impugned order. For the year 1989-90, however, the Reporting Officer and the Reviewing Officer have graded respondent No.1 as 'Outstanding', but the Accepting Authority has graded him as 'Very Good'. More over, for the year 1989-90 in which he was graded as 'Very Good' by the Accepting Authority, respondent No.1had earned the grade of 'Outstanding' from the Reporting Officer and the Reviewing Officer. As per Para 1 of the Guidelines/Procedures for categorization of State Police Service Officers in terms of Regulation 5 (4) of IPS quoted above, the Selection Committee was required to go through the service records of respondent No.1 with reference to not only what has been stated in the column recorded by the Accepting Authority, but also what has been stated in the column recorded by the Reporting and Reviewing Officer who admittedly had graded respondent No.1 as 'Outstanding' for the year 1989-90 also.

8. In the decision of the Supreme Court in the case of **Thanhawala Vs. Union of India & others {(1998) 37 ATC-601}** quoted by the Tribunal in the impugned order the Supreme Court has taken a view that the Accepting or Reviewing Authority have, no doubt, the right to change the grading of the Reporting Officer and/or the Reviewing Authority give higher grading, but if the Accepting Authority lowers the grading for just and proper cause, in such case it is always necessary to give reasons of the down gradation. The portion of the said Judgment of the Supreme Court as quoted in the impugned Judgment of the Tribunal is extracted herein below :

> "7. From the above decisions, it is very clear that the officers entrusted to write the ACR are required to make proper assessment. The Accepting or Reviewing Authority have, no doubt, the right to change the grading

> if the reporting officer and/or the Reviewing Authority give higher grading. The Accepting Authority may lower the gradation for just and proper cause, but in such cases it is always necessary to give reasons of the downgradation. If the reasons are plausible and acceptable such downgradation may be regarded as just reasonable. An ACR for an employee is sacrosanct in his service career. If for certain reasons the Accepting Authority finds that the gradation given by the reporting authority or Reviewing Authority is not just and proper, he should give the reasons at the time of lowering the gradation. ..... In the present case at least the ACR gradations for the period ..... were downgraded. In one case it was downgraded by the Reviewing Authority which was accepted by the Accepting Authority. In the other period the gradation given by the reporting authority as 'Outstanding' was approved by the Reviewing Authority but the Accepting Authority lowered the gradation without recording any reasons. This, in our opinion, in view of the decisions of the Apex Court, is not at all sustainable. Therefore, such downgradation is liable to be set aside. Accordingly we do so ....."

After quoting the aforesaid Judgment of the Supreme Court in the case of **Thanhawala Vs. Union of India & others (Supra)** the Tribunal has held in the impugned order that since no reasons were assigned by the DGP while downgrading the ACR of respondent No.1 from 'Outstanding' to 'Very Good' for the year 1989-90, downgrading of ACR of respondent No.1 from 'Outstanding' to 'Very Good' was not sustainable and was liable to be quashed and the Tribunal has quashed the downgrading of the ACR of respondent No.1 from 'Outstanding' to 'Very Good' for the year 1989-90. We do not think that the Tribunal was within its jurisdiction to quash the remarks recorded by the DGP in the ACR of respondent No.1 that respondent No.1 was 'Very Good' for two reasons; first the ACR for the

year 1989-90 of respondent No.1 related to the year when respondent NO.1 was in State Police Service and the Central Administrative Tribunal has no jurisdiction to quash the remarks made in the ACR of an officer belonging to the State Police Service; second because in a proceeding before the Tribunal in which remarks made in the ACR were not under challenge, the Tribunal could not have directed quashing of a remark made in the ACR. All that the Tribunal could do in such a case is to direct the Selection Committee to consider the fact that the downgrading made by the DGP in the ACR of respondent No.1 for the year 1989-90 was without any reason and such downgrading without any reason have not been held to be valid by the Supreme Court in the aforesaid decision in the case of **Thanhawala Vs. Union of India & others (Supra).**

9. In the case of Smt. Nutan Arvind vs. Union of India & Another (Supra), the Supreme Court observed inter alia in para 5 of the judgment that the Court cannot sit over the assessment made by the DPC as an appellate authority and the DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to write the confidential is for them to decide and call for report from the proper officer. Similarly, it is for the Selection Committee or Review Selection Committee in this case to consider the assessment made by the DGP in the ACR of respondent No.1 for the year 1989-90 for whatever it is worth in view of the aforesaid law laid down by the Supreme Court, but the Tribunal could not have directed the Review Selection Committee to altogether ignore the said assessment made by the DGP in the ACR.

10. We further find from the copy of the proceedings of the Selection Committee which met on 12.02.1991 that out of 11 officers of the State Police Service who were placed in the select list only one officer had been

given overall relative assessment of 'Outstanding' and other 10 officers had been given an overall relative assessment of 'Very Good' by the Selection Committee. Hence, if on reconsideration as directed by the Tribunal in the impugned judgment, the Review Selection Committee gives an overall relative assessment of respondent No.1 as 'Outstanding', he would be entitled to be placed in the select list in the same manner as Shri D.S. Sengar. In fact this is what has been held by the Tribunal in para 6 of the impugned order wherein the Tribunal has held that the grading given by the Selection Committee has been vitiated by arbitrariness by not assessing respondent No.1 at par with Shri D.S. Sengar and the Tribunal while making the said observation has not finally concluded as to whether respondent No.1 is to be rated as 'Outstanding' in overall relative assessment of the merit and has left it to the Review Selection Committee to consider respondent No.1 in the light of the observations made in the order of the Tribunal.

11. Coming now to the submission of Mr. S.P. Singh, leaned counsel appearing for the petitioner that respondent No.1 had not challenged the recommendation of the Selection Committee in its meeting held on 12.02.1991, we are of the view that it is too late for the petitioner to raise this contention before us. The Selection Committee in its meeting held on 12.02.1991 had graded respondent No.1 as 'Very Good' on the basis of the ACRs of respondent No.1 including the adverse remarks dated 31.03.1980 in his ACR. The State Administrative Tribunal vide order dated 31.01.1997 in O.A. No.32 of 1994 had directed expunction of said adverse remarks dated 31.03.1980 of respondent No.1. Pursuant to the order dated 31.01.1997, the State Government had expunged the said adverse remarks dated 31.03.1980 from the ACR of respondent No.1.

Respondent No.1 had filed another O.A. No.199 of 1995 in the Central Administrative Tribunal and by order dated 12.12.1997 the Central Administrative Tribunal had directed that a review DPC be held in view of the fact that the adverse remarks dated 31.03.1980 in the ACR of respondent No.1 had been expunged. The said order dated 12.12.1997 of the Central Administrative Tribunal in O.A. No.199 of 1995 does not seem to have been challenged by any of the authorities and instead pursuant to the said order dated 12.12.1997 of the Central Administrative Tribunal a Review Selection Committee was in fact held on 11.12.1998 and it is the recommendation of the Review Selection Committee in its meeting held on 11.12.1998 that was challenged before the Central Administrative Tribunal in O.A. No.99 of 1999 and the Central Administrative Tribunal by the impugned order dated 07.04.2004 has found that the assessment made by the Review Selection Committee was not fair by any stretch of imagination and by any standard. We have clearly indicated in the above paragraphs that the assessment made by the Review Selection Committee was not in accordance with the guidelines / procedure for categorization of State Police Service Officers in terms of regulation 5(4) of the IPS, quoted above and we do not find any error of law in the view taken by the Tribunal in the impugned order that the assessment made by the Review Selection Committee was fair. Hence, at this belated stage we cannot entertain the contention raised by learned counsel for the petitioner that respondent No.1 had not challenged the recommendation of the Selection Committee in its meeting dated 12.02.1991.

12. Regarding award of cost of Rs.10,000/- against the petitioner, on a reading of para 8 of the impugned judgment of the Tribunal, we find that the reasons which weighed with the Tribunal to award the cost of

Rs.10,000/- is that respondent No.1 had been compelled to come to the Tribunal time and again. Respondent No.1 had approached the Central Administrative Tribunal at the first instance in O.A. No.199 of 1995 with a prayer for a Review Selection Committee on the ground that the Selection Committee which originally met on 12.02.1991 had considered the service records of respondent No.1 including the adverse remarks dated 31.03.1980 in the ACR of respondent No.1 and the said adverse remarks had been expunged by the State Government pursuant to the order dated 31.01.1997 of the State Administrative Tribunal in O.A. No.32 of 1994. Hence, the Selection Committee which had met on 12.02.1991 had gone by the service records of respondent No.1 with the adverse remarks dated 31.03.1980. It was not the case of respondent No.1 at any stage that even if the adverse remarks dated 31.03.1980 remained, respondent No.1 was entitled to be given an overall merit of 'Outstanding'. The case of respondent No.1, on the other hand, was that after the expunction of adverse remarks dated 31.03.1980, he was entitled to reconsideration by a Review Selection Committee and such reconsideration was done for the first time by the Review Selection Committee which met on 11.12.1998 and against the recommendation of the Review Selection Committee, respondent No.1 approached the Tribunal for the first time in O.A. No.99 of 1999. Hence, the reason given by the Tribunal for awarding cost of Rs.10,000/- that respondent No.1 had been compelled to approach the Tribunal time and again, was not correct.

13. In the result, this writ petition is partly allowed and the order in para 5.2 of the impugned order of the Tribunal dated 07.04.2004 quashing the down grading of respondent No.1 from 'Outstanding' to 'Very Good' by the

DGP for the year 1989-90 and the order in para 8 of the impugned order imposing cost of Rs.10,000/- on the petitioner are quashed.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Vacation Judge

Subbu